

# ORMD Straw Man (Comments Received 1/21/09)

## First things first...

### 1. Legal Authority

For those who did not attend the last workshop or the December 15<sup>th</sup> Consumer Protections work group call, the following should help put this document into perspective. It is the ORMD's goal to make discussions on additional retail electricity requirements more productive by focusing on actual language for any proposed requirements. The intent is to move away from "concepts" to something more specific and concrete. By doing that, we also want to keep the discussions on the substantive merits of the proposed requirements rather than the path by which they might be implemented or the Commission's current legal authority to implement them. In other words, for the time being, we are interested in the "what" rather than the "how." However, if parties wish to further comment on the "how", they are encouraged to refer to Section 2.VI on the [ORMD's previous Request for Comments](#). This document is not meant to be comprehensive and we obviously welcome additional proposed language for discussion purposes.

### 2. Applicability

In prior workshops there has been discussion about the intended customer group(s) to which certain requirements and/or utility business practices should apply and the same discussion needs to be had for the proposals found in here. In order to receive meaningful feedback from everyone we decided to throw a proposal out there. It should come as no surprise that there likely will not be a cut-off that will be perfect in each and every circumstance. Having said that, we feel that limiting the majority of these proposed requirements to the residential customer class does not sufficiently take into account the fact that the smallest commercial customers do not necessarily have substantially different characteristics than residential customers. At the same time, we recognize that making these requirements apply to larger customers has the potential to create significant inefficiencies for the commercial and industrial customer class and to worsen the

competitive shopping process for those customers. With that in mind we would like to get feedback on the proposal to use the statutory definition of a small commercial customer to create the cut-off. Section 16-102 of the Public Utilities Act defines a small commercial retail customer as someone who consumes no more than 15,000 kilowatt-hours of electricity annually. We propose to make all sections of the straw man apply to those small commercial customers, in addition to residential customers. The only exceptions would be sections I.1, I.2, I.3, 2.4, IV.3, and V, which we propose to apply to all customer classes. We recognize that, in the absence of utility-provided customer lists, it will not always be clear to a RES whether or not a particular potential customer falls under the definition of a small commercial customer. We also recognize that there is more customer “movement” around the 15,000 kWh annual usage cut-off than, say, a 100kW demand cut-off. However, we believe that choosing the 100kW (in ComEd’s case) and 150kW (in Ameren’s case) demand cut-off would include a substantial number of commercial and industrial customers with characteristics that are very different from that of the residential and smallest commercial customers. With that we invite thoughtful and constructive criticism of such a cut-off for most of the provisions found below.

## **Section I: Marketing Practices**

### **1. Training of ARES sales agents**

All relevant sales agents (whether directly employed by the ARES or otherwise exclusively selling the ARES’ electricity supply service) shall have intimate knowledge of these Retail Electricity Requirements and other relevant statutes, rules, and regulations. All sales agents should be familiar with the supplier’s products and services, including the rates, applicable termination fees, payment options and the customers’ right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission’s toll-free phone number for complaints. An electric supplier and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting

**Comment [SENA1]:** Specify/cite statutes, rules and regs.

or providing services.

## **2. Do Not Contact List**

An electric supplier and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's "Do Not Contact List", which the electric supplier shall obtain on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the electric supplier shall obtain the list on the next business day following the 15th calendar day of that month. The "Do Not Contact List" maintained by the electric utility shall contain the customer's name, address, and phone number(s).

## **3. Customer authorization**

(i) An electric supplier must retain, for a minimum of two years or for the length of the sales contract whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the electric supplier within seven business days after a request is made by the Commission or Commission Staff.

(ii) Throughout the duration of the contract, and for two years thereafter, the alternative electric supplier shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile.

## **4. In-Person Marketing**

(i) Sales agents who contact customers in person at a location other than the electric supplier's place of business for the purpose of selling any product or service offered by the electric supplier are required to produce identification, to be visible at all times, which a) prominently displays in reasonable size type face the full name of the marketing representative, b) displays a photograph of the marketing representative and c) depicts the

legitimate trade name and logo of the electric supplier they are representing. This identification has to be presented as soon as possible and prior to describing any products or services offered by the electric supplier.

(ii) The sales agent has to read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. Additionally, the sales agent must require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

(iii) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, the customer and the interpreter must sign a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises. The sales agent must remove the person's name from the marketing database upon that person's request.

## **5. Telemarketing**

(i) In addition to complying with 815 ILCS 15 (Telephone Solicitations Act), ARES sales agents who contact customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification number;

(ii) Where it is apparent that the customer's English language skills are insufficient to allow

the customer to understand and the customer or another third party informs the ARES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

(iii) The sales agent has to read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. Additionally, the third-party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement. The written disclosure statement and sales contract must be mailed to the customer within 3 business days of the enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

## **6. Direct Mail**

Each ARES that contacts customers for enrollment by direct mail shall include a uniform disclosure statement. If the ARES, at the time of the mailing, offers more than one product or service to the customer class being solicited, the ARES must provide a separate uniform disclosure statement for those products and services as well. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. The Letter of Authorization shall contain a statement that the customer has read and understood the terms and conditions contained in the uniform disclosure statement. The uniform disclosure statement must be printed on a document that will stay with the customer and is not required to be mailed back to the electric supplier.

## **7. Online Marketing**

i) Each ARES that offers retail electric products for enrollment on its website shall prominently display the full description for any products offered without the consumer having to enter any personal information other than zip code and type of service being

sought (residential or commercial). The ARES shall provide a detailed description of any product and service offered for sale printable in no more than a two page format and shall be available for downloading by the customer.

ii) The alternative electric supplier shall obtain, in accordance with the procedures outlined below, an authorization to change electric suppliers that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

(iii) The electric supplier shall require the following customer information in an electronic authorization form:

- (1) The customer's name;
- (2) Confirmation that the person completing the form is authorized to make the supplier change;
- (3) Confirmation that the person completing the form wants to make the supplier change;
- (4) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- (5) The service address affected by the supplier switch;
- (6) The utility account number;
- (7) The billing address if different from service address; and
- (8) The customer's electronic mail address.

(iv) The Internet enrollment website shall, at a minimum, include:

- (1) All items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below.
- (2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment.
- (3) A statement that if the customer is currently with an electric supplier other than the utility, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable.
- (4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions.
- (5) Confirmation that the customer has been enrolled with a identification number and date to allow the customer to verify the specific sales agreement to which the customer assents.
- (6) A conspicuous prompt for the customer to print or save a copy of the contract.
- (7) An option for the customer to request a hard copy of the sales contract by U.S. mail.
- (8) An e-mail address where the customer can express his or her decision to rescind the sales contract.

## **Section II: Rescission/Early Termination and Automatic Renewal of Contract**

### **1. Rescission of sales contract**

Within one business day after accepting a valid electronic enrollment request from the electric supplier, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the electric supplier that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the electric supplier within ten calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

### **2. Early Termination Fee**

Any sales contract that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above.

### **3. Contract expiration and renewal offers**

i) The ARES shall send a notice of contract expiration separate from the bill at least 50 days prior to the date of contract expiration but no more than 90 days in advance of expiration. Nothing in this section shall preclude an ARES from offering a new contract to the customer at any other time during the contract period.

ii) The separate written notice of contract expiration shall include:

(1) a statement on the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice;"

(2) the date the existing contract will expire;

(3) For contracts with a term greater than six months, a statement in bold lettering no smaller than 12 point font that no termination fee shall apply from the date that the contract expiration notice is sent through the end of the existing contract term

(4) The contract terms including the full description of any renewal offers available to the customer; and what affirmative action the customer needs to take by the specified date to continue to receive service from the ARES under the terms of the renewal offer;

(5) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another ARES by the specified date will result in the customer being reverted to the utility default service for 12 months.

iii) If a customer's sales contract includes an automatic renewal clause, an ARES may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with all the relevant provisions outlined in this section and 815 ILCS 601/10 (Automatic Contract Renewal Act). Any service renewed through the use of an automatic renewal clause shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be communicated to the customer and permitted by this section and consistent with the original contract.

#### **4. Assigning customers to a different supplier**

The electric supplier must not assign the agreement to a different electric supplier unless:

- (1) the new supplier is an ARES certified by the Commission and is registered with the electric utility;
- (2) the rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time covered by the agreement;
- (3) the customer is given no less than 30 days prior written notice of the assignment and contact information for the new supplier; and

**Comment [SENA2]:** Define "assign" as the process by which an ARES sells its book to another ARES. Clarify that it does not mean "switching."



(4) the supplier assigning the contract provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

### **Section III: Uniform Disclosure Requirements**

In addition to providing a copy of the sales contract, electric suppliers must disclose the following information prior to enrolling the customer, regardless of the form of marketing used.

The written uniform disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length.

- 1) The legal name of the supplier;
- 2) The supplier's address;
- 3) The supplier's toll free telephone number for billing questions, disputes, and complaints;
- 4) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- 5) The length of the agreement including the automatic renewal clause, if any;
- 6) The presence or absence of early termination fees or penalties, and applicable amounts or the basis on which they are calculated;
- 7) Any possible requirement to pay a deposit and the estimated amount of the deposit or basis on which it is calculated;
- 8) Any fees to the applicant for switching to the supplier;
- 9) The name of the electric service offering for which the customer is being solicited;
- 10) A statement that the customer may rescind the agreement within ten calendar days by calling either the electric supplier or the utility and provide both phone numbers;
- 11) A statement that the supplier is an independent seller of electricity and that the supplier is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- 12) A statement that the utility will continue to deliver the electricity to the customer's premise and will continue to respond to any service calls and emergencies;
- 13) A statement that the customer will receive written notification from the utility confirming the switch of suppliers; and
- 14) If savings are guaranteed, or guaranteed under only certain circumstances, the electric supplier must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur.

## **Section IV: Dispute Resolution/Customer Complaint Reports**

### **1. Required Supplier information**

The electric supplier shall provide Commission Staff with a copy of its bill formats (if it is a billing party), standard customer contract and customer complaint and resolution procedures. It should also provide the name and telephone number of the company representative whom Commission employees may contact to resolve customer complaints and other matters. In any dispute between a customer and an ARES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer. The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

### **2. Dispute Resolution**

(i) **Complaint handling.** A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and an electric supplier contract cannot impair this right. An electric supplier shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.

(ii) **Complaints to electric suppliers.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to an electric supplier. The electric supplier shall promptly investigate and advise the complainant of the

results within 14 calendar days. If the electric supplier does not respond to the customer's complaint in writing, the electric supplier shall orally inform the customer of the ability to obtain the electric supplier's response in writing upon request. A customer who is dissatisfied with the electric supplier's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

**(iii) Complaints to the Commission.**

**(1) Informal complaints.**

(A) If a complainant is dissatisfied with the results of an electric supplier's complaint investigation, the electric supplier shall advise the complainant of the Commission's informal complaint resolution process and the following contact information for the Illinois Commerce Commission's Consumer Services Division: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website address: [www.icc.illinois.gov](http://www.icc.illinois.gov), TTY (800) 858-9277, fax (217) 524-6859. Complaints may be filed with the Consumer Services Division by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

- (i) The customer's name, billing and service addresses, and telephone number;
- (ii) The name of the electric supplier;
- (iii) The customer account number;
- (iv) An explanation of the facts relevant to the complaint;
- (v) The complainant's requested resolution; and
- (vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

(B) The Commission's Consumer Services Division may resolve a complaint via phone by completing a three-way call between the customer, the Consumer Services staff and the supplier. If the complaint is resolved on a three-way call, the supplier shall notify the utility of the resolution. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the supplier. Three-way calling may not be available or Consumer Services staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the supplier. The supplier shall notify the utility of any informal complaint received and remove the disputed charges from the customer's bill until the complaint is resolved. In the case of utility-consolidated billing and the utility purchasing the supplier's receivables, the utility shall cancel disputed supplier charges and

remove those charges from the customer's bill upon notification from the supplier an informal complaint has been filed.

(C) All electric suppliers shall provide the Commission with an email address to receive notification of customer complaints from the Commission.

(D) The electric supplier shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the electric supplier.

(E) The Commission shall review the complaint information and the electric supplier's response and notify the complainant of the results of the Commission's investigation.

(F) While an informal complaint process is pending:

(1) The electric supplier shall not initiate collection activities for any disputed portion of the bill.

(2) A customer shall be obligated to pay any undisputed portion of the bill and the electric supplier may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.

(G) The electric supplier shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

## **(2) Formal complaints.**

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission within two years of the date on which the Commission closes the informal complaint.

## **3. Disclosure of ARES' level of customer complaints**

i) All ARES are required to submit to the Commission a monthly report of all **complaints** received and resolved during the **month**. The monthly complaint report shall be provided to the Commission no later than the 15th day of the following month.

**Comment [SENA3]:** Clarify what constitutes a complaint. Does it include all complaints received directly from customers? The ICC already has a record of informal and formal complaints at the Consumer Service Division.

**Comment [SENA4]:** Clarify that the monthly report is not public.

ii) The Commission shall, on a monthly basis, prepare a “consumer complaint report” to be posted on its website for public use. The report shall be in an easy-to-read and user friendly format. The Commission shall develop a ranking system of individual ARES’ complaints ratios in comparison with an ARES-wide complaint ratio, as well as the associated ranking **methodology**.

**Comment [SENA5]:** What is the methodology for ranking. For example, if an ARES receives 10 complaints at the ICC but all are investigated and resolved with the determination that no violation occurred, an ARES should not have a ranking that reflects 10 complaints.

## **Section V: Enforcement**

If the Commission Staff or other party believes that an electric supplier has repeatedly violated the requirements above, the following additional expedited procedures may be used to enforce these requirements. However, the complainant, the respondent, and the Commission may mutually agree to adjust the procedures established below. No complaint may be filed under this provision until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation.

(i) Reasonable discovery specific to the issue of the complaint may commence upon filing of the complaint. Requests for discovery must be served in hand and responses to discovery must be provided in hand to the requester within 14 days after a request for discovery is made.

(ii) An answer and any other responsive pleading to the complaint shall be filed with the Commission and served in hand upon the complainant within 7 days after the date on which the complaint is filed.

(iii) A pre-hearing conference shall be held within 14 days after the date on which the complaint is filed.

(iv) The hearing shall commence within 30 days of the date on which the complaint is filed. The hearing may be conducted by a hearing examiner or by an arbitrator. Parties shall be entitled to present evidence and legal argument in oral or written form as deemed appropriate by the hearing examiner or arbitrator. The hearing examiner or arbitrator shall issue a written decision within 60 days after the date on which the complaint is filed. The decision shall include reasons for the disposition of the complaint and, if a repeated violation is found, directions and a deadline for correction of the violation.

(v) Any party may file a petition requesting the Commission to review the decision of the hearing examiner or arbitrator within 5 days of such decision. Any party may file a response to a petition for review within 3 business days after actual service of the petition. After the time for filing of the petition for review, but no later than 15 days after the decision of the hearing examiner or arbitrator, the Commission shall decide to adopt the decision of the hearing examiner or arbitrator or shall issue its own final order.

(vi) The complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the hearing examiner or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the hearing examiner or arbitrator. Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

(vii) In determining the appropriate consequence for a violation, the Commission may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the violation, as well as the electric supplier's history of previous violations.

(viii) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on an electric supplier's opportunity to sell electricity to retail customers:

- (a) Suspension from a specific Commission approved retail program in either a specific utility service territory or all of Illinois;
- (b) Suspension of the ability to enroll new customers in either a specific utility service territory or all of Illinois;
- (c) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;
- (d) Reimbursements to customers who did not receive savings promised in the electric supplier's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the electric supplier's marketing materials or to customers who incurred costs as a result of the electric supplier's failure to comply with the requirements set forth above;
- (e) Release of customers from sales contracts without imposition of early termination fees;
- (f) Revocation of an electric supplier's eligibility to operate in Illinois;
- (g) Any other measures that the Commission may deem appropriate.
- (h) Consequences imposed pursuant to this paragraph shall continue to apply until the electric supplier's failure to comply has been cured or the Commission or Commission Staff has determined that no further cure is necessary.

# ORMD Straw Man (Comments Received 12/22/08)

## Section I: Marketing Practices

### 1. Training of ARES sales agents

All sales agents (whether directly employed by the ARES or independently selling the ARES' products and services) shall have intimate knowledge of these Retail Electricity Requirements and other relevant statutes, rules, and regulations. All sales agents should be familiar with the supplier's products and services, including the rates, applicable termination fees, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints. An electric supplier and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

### 2. Do Not Contact List

An electric supplier and its sales agents shall refrain from any direct marketing or soliciting to ~~residential~~ residential consumers on the electric utility's "Do Not Contact List", which the electric supplier shall obtain on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the electric supplier shall obtain the list on the next business day following the 15th calendar day of that month.

### 3. Customer authorization

(i) An electric supplier must retain, for a minimum of two years or for the length of the sales contract whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the electric supplier within five calendar days after a request is made by the Commission or Commission Staff.

(ii) Throughout the duration of the contract, the alternative electric supplier shall retain and, within three calendar days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile.

### 4. In-Person Marketing

(i) Sales agents who contact ~~residential~~ customers in person at a location other than the

**Comment [SENA6]:** This should be applicable to an "in-person" contact with a customer that is unsolicited by the customer or made without first obtaining an appointment with the customer. It is appropriate to cover unannounced marketing calls.



electric supplier's place of business for the purpose of selling any product or service offered by the electric supplier are required to produce identification, to be visible at all times, which a) prominently displays in reasonable size type face the full name of the marketing representative, b) displays a photograph of the marketing representative and c) depicts the legitimate trade name and logo of the electric supplier they are representing. This identification has to be presented as soon as possible and prior to describing any products or services offered by the electric supplier. The sales agent must remove the person's name from the marketing database upon that person's request.

(ii) The sales agent has to **read** to the **residential** customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. Additionally, the sales agent must require the customer to initial the written uniform disclosure statement which is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document. ARES that are affiliates of electric utilities should not describe or disclose their relationship to the utility unless such information is specifically requested by the customer.

**Comment [SENA7]:** Reading would be inappropriate for C&I customers that would prefer to receive concise and timely information about the market and would be annoyed if each communication was burdened with the mandatory elements that are prescribed in the new standards which may be appropriate for residential customers but are not for larger customers.

(iii) Where it is apparent that the **residential** customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, the customer and the interpreter must sign a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

## 5. Telemarketing

(ii) In addition to complying with 815 ILCS 15 (Telephone Solicitations Act), ARES sales agents who contact **residential** customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification number;

(ii) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and the customer or another third party informs the ARES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

(iii) The sales agent has to read **to** the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is

**Comment [SENA8]:** Same comment as for "in-person."

contained in the uniform disclosure requirements section below. Additionally, the sales agent must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement. The written disclosure statement must be mailed to the customer within 3 business days of the enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document. ARES that are affiliates of electric utilities should not describe or disclose their relationship to the utility unless such information is specifically requested by the customer.

## **6. Direct Mail**

Each ARES that contacts residential customers for enrollment by direct mail shall include a uniform disclosure statement. If the ARES, at the time of the mailing, offers more than one product or service to the customer class being solicited, the ARES must provide a separate uniform disclosure statement for those products and services as well. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. Along with the required Letter of Authorization, a customer must initial that they have read and understand the terms and conditions contained in the uniform disclosure statement. The uniform disclosure statement must be printed on a document that will stay with the customer and is not required to be mailed back to the electric supplier. ARES that are affiliates of electric utilities should not describe or disclose their relationship to the utility unless such information is specifically requested by the customer.

## **7. Electronic Enrollment**

i) Each ARES that offers retail electric products for enrollment on its website shall prominently display the full description for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The ARES shall provide a detailed description of any product and service offered for sale printable in no more than a two page format and shall be available for downloading by the customer.

ii) The alternative electric supplier shall obtain, in accordance with the procedures outlined below, an authorization to change electric suppliers that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

(iii) The electric supplier shall require the following customer information in an electronic authorization form:

- (1) The customer's name;
- (2) Confirmation that the person completing the form is authorized to make the supplier change;
- (3) Confirmation that the person completing the form wants to make the supplier change;
- (4) The names of the suppliers affected by the change;

- (5) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- (6) The service address affected by the supplier switch;
- (7) The utility account number;
- (8) The billing address if different from service address; and
- (9) The customer's electronic mail address.

(iv) The Internet enrollment website shall, at a minimum, include:

- (1) All items within the uniform disclosure statement for residential customers. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below.
- (2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment.
- (3) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions.
- (4) Confirmation that the customer has been enrolled with a identification number and date to allow the customer to verify the specific sales agreement to which the customer assents.
- (5) A conspicuous prompt for the customer to print or save a copy of the contract.
- (6) An option for the customer to request a hard copy of the sales contract by U.S. mail.
- (g) An e-mail address where the customer can express his or her decision to rescind the sales contract.

## **Section II: Rescission/Early Termination and Automatic Renewal of Contract**

### **1. Rescission of sales contract**

Within one business day after receiving a valid electronic enrollment request from the electric supplier, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the electric supplier that will be providing power and energy service. If the residential customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the electric supplier within ten calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state

**Comment [SENA9]:** Since generation supply is purchased at the time the contract is signed, C&I customers should be willing to pay fees to make the supplier whole. If the supplier is supposed to hold a price open for the 10-day period without purchasing generation supply, there would be significant premiums that would raise the cost of service.

the last day for making a request to rescind the enrollment. This rescission period will not apply to non residential consumers.

## 2. Early Termination Fee

Any residential sales contract that contains an early termination fee shall disclose the amount of the early termination fee, brand the method of calculating the termination fee, if as applicable. It must also state that the early termination fee does not apply if the residential customer cancels the contract within the rescission period described above.

**Comment [SENA10]:** The amount of the termination fee is not known at the inception of the agreement as it will depend upon conditions at the time the fee becomes payable.

## 3. Contract expiration and renewal offers

i) For residential consumers, if the ARES shall send a notice of contract expiration separate from the bill at least 45 days prior to the date of contract expiration but no more than 60 days in advance of expiration. Nothing in this section shall preclude an ARES from offering a new contract to the customer at any other time during the contract period, provided that the change will benefit the customer. Notices can be sent to non-residential consumers if the ARES chooses, but the ARES is not required to do so.

**Comment [SENA11]:** Often times, a sales representative has a close relationship with a C&I customer. For this reason, these customers have regular contact with suppliers and are well aware of upcoming expiration dates. This is less likely for residential customers.

ii) The separate written notice of contract expiration shall include:

(1) a statement on the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice;"

(2) the date the existing contract will expire;

(3) A statement in bold lettering no smaller than 12 point font that no termination fee shall apply for 45 days from the date that the notice is sent;

(4) The contract terms including the full description of any renewal offers available to the customer;

(5) The actions the customer needs to take (if any) to continue to receive service from the ARES under the terms of any of the disclosed renewal offers and the deadline by which actions must be taken;

(6) In the event that no renewal offers are presented to the customer, or the customer declines all renewal offers for which affirmative consent is required, a disclosure that the failure of the customer to switch to another ARES by the specified date will result in the customer being reverted to the utility default service; and

(7) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days.

iii) If a customer's sales contract includes an automatic renewal clause, an ARES may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with all the relevant provisions outlined in this section and 815 ILCS 601/10 (Automatic Contract Renewal Act). Any service renewed through the use of an automatic renewal clause shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be communicated to the customer and permitted by this section and consistent with the original contract.

#### 4. Assigning customers to a different supplier

The electric supplier must not assign the agreement to a different electric supplier unless:

- (1) the new supplier is an ARES certified by the Commission;
- (2) the rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time covered by the agreement;
- (3) the customer is given no less than 30 days prior written notice of the assignment and contact information for the new supplier; and
- (4) the supplier assigning the contract provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

### **Section III: Uniform Disclosure Requirements**

In addition to providing a copy of the sales contract, electric suppliers must disclose the following information prior to enrolling the residential customer, regardless of the form of marketing used. The written uniform disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length.

- 15) The legal name of the supplier;
- 16) The supplier's address;
- 17) The supplier's toll free telephone number for billing questions, disputes, and complaints;
- 18) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- 19) The length of the agreement including the automatic renewal clause, if any;

**Comment [SENA12]:** For ARES serving C&I customers, the sales agreements are generated through internal data systems. To now require that certain material terms be incorporated in a separate disclosure form would entail costly and material modifications to these systems. Until such modifications are completed, the data will need to be incorporated manually for every sales agreement --- a process that is inefficient, costly and time consuming.

- 20) The presence or absence of early termination fees or penalties, and applicable amounts or the basis on which they are calculated;
- 21) Any possible requirement to pay a deposit and the estimated amount of the deposit or basis on which it is calculated;
- 22) Any fees to the applicant for switching to the supplier;
- 23) The name of the electric service offering for which the customer is being enrolled;
- 24) A statement that the customer may rescind the agreement within ten calendar days by calling either the electric supplier or the utility and provide both phone numbers;
- 25) A statement that the supplier is an independent seller of electricity and that the supplier is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- 26) A statement that the utility will continue to deliver the electricity to the customer's premise and will continue to respond to any service calls and emergencies;
- 27) A statement that the customer will receive written notification from the utility confirming the switch of suppliers; and
- 28) If savings are guaranteed, or guaranteed under only certain circumstances, the electric supplier must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur.

## **Section IV: Dispute Resolution/Application of Payments**

### **1. -Required Supplier information**

The electric supplier shall provide Commission Staff with a copy of its bill formats, standard customer contract and customer complaint and resolution procedures. It should also provide the name and telephone number of the company representative whom Commission employees may contact to resolve customer complaints and other matters. In any dispute between a customer and an ARES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of a residential or small commercial customer. The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

**Comment [SENA13]:** This should not apply to commercial and industrial customers, as they generally have the right to negotiate the contract, thus no provision should be construed in favor of either Party.

### **2. Dispute Resolution**

(i) **Complaint handling.** A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and an electric supplier contract cannot impair this right. An electric supplier shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or

mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.

(ii) **Complaints to electric suppliers.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to an electric supplier. The electric supplier shall promptly investigate and advise the complainant of the results within 14 calendar days. If the electric supplier does not respond to the customer's complaint in writing, the electric supplier shall orally inform the customer of the ability to obtain the electric supplier's response in writing upon request. A customer who is dissatisfied with the electric supplier's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

**Comment [SENA14]:** Some disputes may not necessarily be resolved within 14 calendar days if they are dependent on future meter reads or other corrective action taken by a third party. If by "advising complainant of the results" we mean that we can tell them what action we will be taking within 14 days, but not necessarily communicating a concluded result within that period, that's fine.

(iii) **Complaints to the Commission.**

(1) **Informal complaints.**

(A) If a complainant is dissatisfied with the results of an electric supplier's complaint investigation, the electric supplier shall advise the complainant of the Commission's informal complaint resolution process and the following contact information for the Illinois Commerce Commission's Consumer Services Division: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website address: [www.icc.illinois.gov](http://www.icc.illinois.gov), TTY (800) 858-9277, fax (217) 524-6859. Complaints may be filed with the Consumer Services Division by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

- (i) The customer's name, billing and service addresses, and telephone number;
- (ii) The name of the electric supplier;
- (iii) The customer account number;
- (iv) An explanation of the facts relevant to the complaint;
- (v) The complainant's requested resolution; and
- (vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

(B) The Commission's Consumer Services Division may resolve a complaint via phone by completing a three-way call between the customer, the Consumer Services staff and the supplier. If the complaint is resolved on a three-way call, the supplier shall notify the utility of the resolution. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the supplier. Three-way calling may not be available or Consumer Services staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the supplier. The supplier shall notify the utility of any informal complaint received and remove the disputed charges from the customer's bill until the complaint is resolved. In the case of utility-consolidated billing

and the utility purchasing the supplier's receivables, the utility shall cancel disputed supplier charges and remove those charges from the customer's bill upon notification from the supplier an informal complaint has been filed.

(C) All electric suppliers shall provide the Commission with an email address to receive notification of customer complaints from the Commission.

(D) The electric supplier shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the electric supplier.

(E) The Commission shall review the complaint information and the electric supplier's response and notify the complainant of the results of the Commission's investigation.

(F) While an informal complaint process is pending:

(1) The electric supplier shall not initiate collection activities for any disputed portion of the bill.

(2) A customer shall be obligated to pay any undisputed portion of the bill and the electric supplier may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.

(G) The electric supplier shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

## **(2) Formal complaints.**

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission within two years of the date on which the Commission closes the informal complaint.

## **3. Application of Payments**

(i) The billing party shall allocate **residential** customer payments to the following categories of charges on the bill in this order of priority:

(1) amounts owed to avoid termination, suspension or disconnection of commodity or delivery service;

(2) amounts owed under a Deferred Payment Agreement (DPA), including installment payments and current charges;

(3) arrears; and

(4) current charges not associated with a DPA.

(ii) The billing party shall pro-rate payments to the charges within each category in proportion to each party's charges in that category. After satisfaction of the charges in a category, assuming available funds, the remainder of the payment shall apply to the



next highest category according to the priority of payments and in the same manner as described above until the payment is exhausted. When there is no longer a balance for electric service, payment may be applied to non-electric services billed.

(iii) The billing party may retain any payment amounts in excess of the amounts due as prepayments for future charges or return the excess amounts to customers at the customer's discretion.

(iv) When the billing or non-billing party enters into a multi-month payment agreement with a customer or waives any charges, that party shall notify the other party of such action.

(v) The billing party shall hold payments received without account numbers or enough information for the billing party to identify the accounts and attempt to obtain information to identify the payer. If sufficient information is not obtained to identify the account information prior to the next bill, the billing party shall present the unpaid amount and late charge, if applicable, on the bill. If the customer contacts the billing party to inquire about the late charge and the lack of payment credit, the billing party shall resolve the matter and reverse the late charges. The billing party shall notify the non-billing party of the matter and its resolution and then allocate payments as necessary to balance the account.

## **Section V: Enforcement**

If the Commission Staff or other party believes that an electric supplier has repeatedly violated the requirements above, the following additional expedited procedures may be used to enforce these requirements. However, the complainant, the respondent, and the Commission may mutually agree to adjust the procedures established below. No complaint may be filed under this provision until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation.

(i) Reasonable discovery specific to the issue of the complaint may commence upon filing of the complaint. Requests for discovery must be served in hand and responses to discovery must be provided in hand to the requester within 14 days after a request for discovery is made.

(ii) An answer and any other responsive pleading to the complaint shall be filed with the Commission and served in hand upon the complainant within 7 days after the date on which the complaint is filed.

(iii) A pre-hearing conference shall be held within 14 days after the date on which the complaint is filed.

(iv) The hearing shall commence within 30 days of the date on which the complaint is filed. The hearing may be conducted by a hearing examiner or by an arbitrator. Parties shall be entitled to present evidence and legal argument in oral or written form as deemed appropriate by the hearing examiner or arbitrator. The hearing examiner or arbitrator shall issue a written decision within 60 days after the date on which the complaint is filed. The decision shall include reasons for the disposition of the complaint and, if a repeated violation is found, directions and a deadline for correction of the violation.

(v) Any party may file a petition requesting the Commission to review the decision of the hearing examiner or arbitrator within 5 days of such decision. Any party may file a response to a petition for review within 3 business days after actual service of the petition. After the time for filing of the petition for review, but no later than 15 days after the decision of the hearing examiner or arbitrator, the Commission shall decide to adopt the decision of the hearing examiner or arbitrator or shall issue its own final order.

(vi) The complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the hearing examiner or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the hearing examiner or arbitrator. Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

(vii) In determining the appropriate consequence for a violation, the Commission may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the violation, as well as the electric supplier's history of previous violations.

(viii) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on an electric supplier's opportunity to sell electricity to retail customers:

- (i) Suspension from a specific Commission approved retail program in either a specific utility service territory or all of Illinois;
- (j) Suspension of the ability to enroll new customers in either a specific utility service territory or all of Illinois;

- (k) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;
- (l) Reimbursements to customers who did not receive savings promised in the electric supplier's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the electric supplier's marketing materials or to customers who incurred costs as a result of the electric supplier's failure to comply with the requirements set forth above;
- (m) Release of customers from sales contracts without imposition of early termination fees;
- (n) Revocation of an electric supplier's eligibility to operate in Illinois;
- (o) Any other measures that the Commission may deem appropriate.
- (p) Consequences imposed pursuant to this paragraph shall continue to apply until the electric supplier's failure to comply has been cured or the Commission or Commission Staff has determined that no further cure is necessary.